

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA, CR 13-52-GF-BMM-03

Plaintiff,

vs.

DUSTIN JAY AFTER BUFFALO,

Defendant.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Mr. After Buffalo of violating his conditions of supervised release by (1) failing to report to his probation officer as directed, (2) failing to notify his probation officer prior to a change in residence and (3) failing to participate in substance abuse treatment. He admitted to the violations. Mr. After Buffalo's supervised release should be revoked. He should be sentenced to six months of custody, with no supervised release to follow. The Court recommends that Mr. After Buffalo serve his sentence in the Federal Correctional Institution in Herlong, California.

II. Status

Mr. After Buffalo pleaded guilty to Burglary in August 2013. (Doc. 69.) Chief District Judge for the District of Montana Dana Christensen sentenced him to 12 months and one day in prison, and 36 months of supervised release. (Doc. 85.) Mr. After Buffalo began his first term of supervised release on March 22, 2014. On December 30, 2014, Mr. After Buffalo met with his probation officer to address non-compliance behavior after Mr. After Buffalo tested positive for marijuana. He was subsequently placed in chemical dependency treatment. On March 17, 2015, after further noncompliance issues, Mr. After Buffalo attended a Non-Compliance Hearing with his probation officer and Supervising United States Probation Officer Kevin Heffernan. Mr. After Buffalo was redirected to chemical dependency treatment and warned that any further noncompliance would result in proceedings before this Court. (Doc. 104.)

In August 2015, United States District Judge Brian Morris revoked Mr. After Buffalo's supervised release because he violated its conditions by using alcohol. Mr. After Buffalo was sentenced to three months of custody and thirty-three months of supervised release. (Doc. 113.) Mr. After Buffalo's next term of supervision began on October 6, 2015. (Doc. 125.)

Judge Morris revoked Mr. After Buffalo's supervised release again on February 2, 2016, because he consumed alcohol and failed to notify is probation

officer of his contact with law enforcement. (Doc. 138.) Judge Morris sentenced him to three months in custody followed by thirty months of supervised release. He began his current term of supervised release on October 1, 2016.

Mr. After Buffalo successfully completed six months of Public Law at the Great Falls Prerelease Center. On October 24, 2016, the United States Probation Office filed a Report on Offender Under Supervision stating that Mr. After Buffalo admitted to using methamphetamine and alcohol. (Doc. 150.)

Petition

The Probation Office filed a petition asking the Court to revoke Mr. After Buffalo's supervised release on November 3, 2016. (Doc. 151.) The Probation Office accused Mr. After Buffalo of violating his conditions of supervised release by (1) failing to report to his probation officer as directed, (2) failing to notify his probation officer prior to a change in residence and (3) failing to participate in substance abuse treatment. (*Id.*) Judge Morris issued a warrant for Mr. After Buffalo's arrest the same day. (Doc. 152.)

Initial appearance

Mr. After Buffalo appeared before the undersigned on December 6, 2016, in Great Falls, Montana. Federal Defender Hank Branom accompanied him. Assistant United States Attorney Ryan Weldon represented the United States.

Mr. After Buffalo said he had read the petition and understood the

allegations. Mr. After Buffalo waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

Mr. After Buffalo admitted that he violated the conditions of his supervised release. The violations are serious and warrant revocation of his supervised release.

Mr. After Buffalo's violation grade is Grade C, his criminal history category is I, and his underlying offense is a Class C felony. He could be incarcerated for up to twenty-four months. He could be ordered to remain on supervised release for thirty months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

Mr. Branom recommended a sentence of four to six months of custody. Mr. Weldon recommended a sentence of nine months in custody, with no supervised release to follow. Mr. After Buffalo addressed the Court and stated that he knows he has been associating with the wrong people and would like to relocate to Billings or Missoula.

III. Analysis

Mr. After Buffalo's supervised release should be revoked because he admitted violating its conditions. Mr. After Buffalo should be sentenced to six

months in custody, with no supervised release to follow. The Court recommends that Mr. After Buffalo serve his sentence in the Federal Correctional Institution in Herlong, California. This sentence would be sufficient given the serious violation of the Court's trust, but it would not be greater than necessary.

IV. Conclusion

Mr. After Buffalo was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider Mr. After Buffalo's objection, if it is filed within the allotted time, before making a final determination on whether to revoke Mr. After Buffalo's supervised release and what, if any, sanction to impose.

The Court FINDS:

Dustin Jay After Buffalo violated his conditions of supervised release by (1) failing to report to his probation officer as directed, (2) failing to notify his probation officer prior to a change in residence and (3) failing to participate in substance abuse treatment.

The Court RECOMMENDS:

The district court should enter the attached Judgment, revoking Mr. After Buffalo's supervised release and committing Mr. After Buffalo to the custody of the United States Bureau of Prisons for six months, with no supervised release to follow. Mr. After Buffalo should serve this sentence in the Federal Correctional Institution

in Herlong, California.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 12th day of December 2016.



John Johnston
United States Magistrate Judge